



## INTER-OFFICE MEMORANDUM LEGAL DEPARTMENT

TO: COUNCIL PRESIDENT DEREK DIETER  
ALL SOUTH BEND COMMON COUNCIL MEMBERS

FROM: CHARLES S. LEONE - CITY ATTORNEY *CL*

SUBJECT: LEGAL DEPARTMENT ANNUAL REPORT – 2010

DATE: MARCH 7, 2011

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### I. OVERVIEW

In 2010 the City of South Bend Legal Department continued to provide support, advice and representation to various units of the City of South Bend and to represent the City in litigation in state and federal courts and before administrative agencies.

During 2010, the nine attorneys\* of the City Attorney's staff provided assistance to all of the departments and divisions within the City of South Bend, together with various City and City-related boards, commissions, corporations, and authorities, including the Alcoholic Beverage Board, Human Rights Commission, Area Board of Zoning Appeals, Redevelopment Commission, Redevelopment Authority, Board of Public Safety, Board of Public Works, Parks Board, Century Center Board, Historic Preservation Commission, South Bend Building Corporation, Sister Cities of South Bend, Inc., South Bend Police Athletic League Corporation, the South Bend Common Council and the office of City Clerk.

The Legal Department provides advice and direction to each of these departments and entities with respect to the conduct of their business under local, state, and federal law so that each entity will operate in compliance with all legal requirements. The Department also represents the City in disputes in state and federal court and before administrative agencies in order to protect the City's interests when the City has been named as a defendant in lawsuits or administrative actions or to advance the City's interests when the City has a claim against another person or entity and litigation is the only way to achieve the goal of advancing and protecting the City's interests.

The Department also engages in negotiations with outside parties to establish the City's role in various projects and undertakings and prepares a variety of documents to memorialize the relationships which have been established and to provide the framework for ongoing relationships.

### II. HIGHLIGHTS OF 2010

In 2010, the Department was able to successfully reduce reliance on outside counsel through the assistance of in-house attorneys and volunteer law students. Staff attorneys completed several right-of-way

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\* The staff at the end of 2010 consisted of four full-time attorneys, five part-time attorneys, one paralegal, one office manager/paralegal, two legal secretaries and one collection specialist. There were no personnel changes in 2010.

projects in-house which in previous years has been contracted to outside firms. Department attorneys also completed work on several high profile projects including the Kroc Center.

During the year, the Department handled a significant increase in property acquisitions and TIF-funded projects as a result of ongoing growth in South Bend. The Department increased collections, decreased travel, research and education costs with frequent use of webinars and the internet, and eliminated third-party costs by handling claims in-house in conjunction with the Safety and Risk Coordinator.

### III. LIABILITY SELF-INSURANCE

The Department continues to manage the City's self-insurance liability program, paying out \$1,243,598.86 in claims against the City in 2010. If the risks covered by the self insurance program had been fully insured, the estimated premiums would have been in the \$2.5 Million to \$5 Million range. The cost savings are thus substantial although the amount of payout varies significantly from year to year. The recent history of the City's liability self-insurance cost is as follows:

<u>Year</u>	<u># of New Claims Filed</u>	<u># of Claims Paid</u>	<u>Claims Paid</u>	<u>Year-End Claims &amp; Suits Pending</u>
1998	249		\$ 411,221.79	
1999	343		\$ 446,104.48	
2000	245		\$1,102,372.60	
2001	352		\$ 648,242.73	
2002	220		\$ 341,655.19	63
2003	209	118	\$ 332,005.11	56
2004	220	125	\$ 330,949.26	60
2005	187	125	\$ 813,481.69	36
2006	169	90	\$ 401,769.01	45
2007	165	89	\$ 439,503.35	48
2008	206	74	\$ 265,438.69	43
2009	163	90	\$ 421,832.41	35
2010	168	77	\$1,253,926.67	23

The most significant liability fund payments in 2010 are as follows:

<u>Year of Claim</u>	<u>Type of Claim</u>	<u>Lawsuit/Settlement</u>	<u>Payment</u>	<u>Statutory Risk to City</u>
2000	Collapsed sidewalk	lawsuit with appeals	\$324,508.93	\$324,508.93
1999	Severe injuries - auto	mediated settlement	\$160,000.00	\$300,000.00
2006	Severe injuries - sidewalk	trial	\$152,643.00	\$500,000.00
2006	Serious injuries- auto	mediated settlement	\$80,000.00	\$500,000.00
2005	Police dog bite	Judicial settlement	\$75,000.00	\$700,000.00

The claims review process, in conjunction with the defense, negotiation, and settlement process, assists City departments in identifying areas of risk and engenders discussion and action on the best ways to manage that risk.

In 2008, the statutory limit for claims against governmental entities and employees increased to \$700,000.00. In 2010, four new claims were filed against the City at this higher level.

#### **IV. PROSECUTION OF ORDINANCE VIOLATIONS**

The Legal Department also prosecutes claims in the local courts for violations of City ordinances, occasionally through the injunction process, but most often through civil actions to collect fines. During 2010, \$136,774.00 was collected through the Legal Department for ordinance violations and other miscellaneous accounts for various departments.

The history of total collections is as follows:

1999	\$ 75,446.00
2000	\$ 78,713.17
2001	\$114,053.78
2002	\$122,226.37
2003	\$160,036.66
2004	\$161,466.00
2005	\$193,846.25
2006	\$152,268.00
2007	\$103,745.00
2008	\$117,510.00
2009	\$ 98,065.00
2010	\$136,774.00

In 2010, The Department resolved problems of access to license plate data from the State of Indiana and streamlined internal procedures with the City Clerk's office resulting in collections at a higher level than recent years. Under statutory provisions which became effective on July 1, 2006, the City Clerk's authority to collect fines increased from \$100.00 to \$250.00, thus significantly reducing the referrals of unpaid tickets to the Legal Department.

A breakdown of the history for the collection of ordinance violations, which include code enforcement, noise violations, parks infractions and any other miscellaneous violation of City ordinances, and parking ticket violations is as follows:

	<u>Ordinance Violations</u>	<u>Parking Tickets</u>
2000	\$30,544.17	\$17,866.00
2001	\$70,737.27	\$15,703.00
2002	\$82,005.55	\$17,168.00
2003	\$96,008.56	\$13,736.65
2004	\$92,065.00	\$25,122.00
2005	\$91,060.23	\$21,839.00
2006	\$85,869.98	\$14,713.00
2007	\$58,878.00	\$12,973.00
2008	\$47,553.00	\$11,284.00
2009	\$36,838.00	\$ 8,651.00
2010	\$30,786.00	\$15,742.00

#### **V. SPECIAL TAX ASSESSMENTS**

In early 2007, the Legal Department and Code Enforcement worked with the St. Joseph County Auditor and Treasurer to establish procedures and forms to certify Code enforcement civil penalties and demolition costs as special tax assessments, giving those City liens priority with other taxes on real estate

ahead of mortgages and other lien interests. Collections under this new procedure, managed through Code Enforcement, have been as follows:

2007	\$ 99,000.00
2008	\$190,108.00
2009	\$186,814.33
2010	\$ 77,541.61

## **VI. LEGISLATIVE SERVICES**

Legislative work of the Department includes preparation of proposed ordinances to be submitted to the South Bend Common Council, review of proposed state legislation pending before the Indiana General Assembly, and monitoring of proposed federal legislation which could affect municipal operations.

## **VII. TRAINING ON LEGAL ISSUES**

The Legal Department also provides information and training to City employees on changes in the law. Members of the City Attorney's staff have provided training to Uniformed Officers of the South Bend Police Department and to the South Bend Human Rights Commission.

## **VIII. LITIGATION**

During 2010, the Legal Department was involved in the following litigation on behalf of the City of South Bend:

<u>Litigation Area</u>	<u>City as Plaintiff</u>	<u>City as Defendant</u>
Animal Warrants	3	
Code Enforcement	8	0
Injunctions	16	
Foreclosures		211
Police Actions		25
Vehicles Accidents	1	7
Personal Injury (not vehicle)		5
EEOC Claims and Litigation		18
Worker's Compensation		2
Utility Matters		0
Miscellaneous		2
Total	28	268

The Department continued to file significantly fewer Code Enforcement lawsuits because of the initiation of the special assessment process to certify Code penalties and costs on property tax bills as shown below:

### **Code Penalty and Costs Lawsuits Filed**

2006	178
2007	55
2008	3
2009	6
2010	0

Minor miscellaneous matters not included in this table are infraction cases in Small Claims Court and Code Enforcement collections in Small Claims Court.

The Legal Department also participated in eight mediation sessions in 2010 in an attempt to resolve disputes in litigation. Department attorneys also participated in the following administrative hearings in 2010:

<u>Agency</u>	<u>Number of Hearings</u>
Human Rights Commission	30
Alcohol & Tobacco Commission	12
Code Enforcement	79
License Appeals	14
Unemployment Hearings	17

In 2010, the Legal Department was active in pursuing South Bend's Drug and Disorderly House Ordinances. A total of 196 Notices to Abate under the Drug House Ordinance and 63 Notices to Abate under the Disorderly House Ordinance were sent to owners/occupants in the City. Three of these notices resulted in the filing of injunction lawsuits.

Significant litigation concluded during 2010 included settlements of four serious personal injury claims and verdicts resolving two high risk injury cases as well as five excessive force claims.

## **IX. PUBLIC RECORDS**

The Department coordinates responses to request for public records under the Indiana Access to Public Records Act. Under the Act, most initial responses are required within one business day. The number of requests has grown significantly and requests are often more complex than in previous years.

### **Public Records Request Responses:**

2008	1529
2009	1549
2010	1822

## **X. TRANSACTIONAL ASSISTANCE**

During 2010, Department attorneys prepared and reviewed approximately 507 agreements, resolutions and documents conveying real estate interests in transactions in which the City was involved, primarily for the Department of Community and Economic Development and Department of Public Works.

## **XI. NEGOTIATIONS**

Negotiations during 2010 involving Department attorneys included collective bargaining with FOP Lodge No. 36, South Bend Firefighters Association Local No. 362 and Teamsters Local Union No. 364 resulting in agreements with all three bargaining units. The Department also engages in settlement negotiations and mediation to resolve pending claims and litigation and in project term negotiations to assist economic development activity.

## **XII. CIVIC AND PROFESSIONAL PARTICIPATION BY STAFF ATTORNEYS**

During 2010, several of the attorneys in the Legal Department participated in activities which contributed to the City's presence and to their own professional development. These activities include service on the IACT Legislative Committee; St. Joseph County Bar Association Board of Governors; Character and Fitness Committee of the Indiana Supreme Court; Pro Bono Committee and Bench and Bar Committee of the St. Joseph County Bar Association; Indiana Municipal Lawyers Association Board; St. Joseph County Bar Foundation; Little League Board of Directors; Center for the Homeless Board of Directors, the Indiana Association of Cities and Towns, South Bend Community School Corporation Internships, various Committees of Saint Joseph Parish of South Bend and the Northern Indiana Moot Court Competition.

cc: John Voorde, City Clerk  
Kathy Cekanski-Farrand, Common Council Attorney